

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emma Kaisla	Team: Squad #15	CCRB Case #: 202003890	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 9:02 PM	Location of Incident: 3rd Avenue between 149th Street and Westchester Avenue	Precinct: 40	18 Mo. SOL 12/2/2021	EO SOL 5/4/2022	
Date/Time CV Reported Wed, 06/03/2020 5:35 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Wed, 06/03/2020 5:35 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. LT Andrew Johnson	00000	941966	040 PCT
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Iodice	17511	951840	040 PCT
2. POM Christophe Morales	26723	939799	040 PCT
3. SGT David Velez	00186	946365	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer struck § 87(2)(b) with a baton.	
B. Officers	Force: Officers used physical force against § 87(2)(b)	
C. Officers	Force: Officers used physical force against § 87(2)(b)	
D. Officers	Discourtesy: Officers spoke discourteously to § 87(2)(b)	
E. An officer	Force: An officer used physical force against § 87(2)(b)	
F. An officer	Force: An officer restricted § 87(2)(b)'s breathing.	
§ 87(4-b), § 87(2)(g)		

## Case Summary

On June 3, 2020, § 87(2)(b) filed the following complaint with the CCRB via its website.

On June 2, 2020, a curfew was in effect as a result of Mayor de Blasio's Executive Order. At around 9:00 p.m., after curfew, § 87(2)(b) stopped at a protest happening near the corner of 149<sup>th</sup> Street and 3<sup>rd</sup> Avenue in the Bronx. An officer pushed him from behind with his baton (**Allegation A: Force – Nighstick as club,** § 87(2)(g)). Then seven to eight officers grabbed § 87(2)(b) and lifted him into the air by his legs and hoodie. They then slammed him onto the ground so that his neck hit the pavement first (**Allegation B: Force – Physical force,** § 87(2)(g)). Once § 87(2)(b) was on the ground, officers punched him repeatedly in the skull between his crown and his neck (**Allegation C: Force – Physical force,** § 87(2)(g)). While § 87(2)(b) was on the ground, officers attempted to handcuff him, giving commands including “shut the fuck up,” “put your hands behind your fucking back, and “stop fucking resisting.” (**Allegation D: Discourtesy,** § 87(2)(g)). Still lying on the ground, § 87(2)(b) turned to look at the officers. While he looked up, an officer stomped on the left side of § 87(2)(b) face with the bottom of his boot (**Allegation E: Force– Physical force,** § 87(2)(g)). Officers maneuvered § 87(2)(b) face down, held his arms and legs, and handcuffed him. An officer placed their knee on § 87(2)(b) lower back behind his rib cage, restricting his breathing (**Allegation F: Force– Restricted breathing,** § 87(2)(g)). Officers brought § 87(2)(b) to the 40 PCT stationhouse where he was issued a summons by PO John Iodice, an officer not present for his apprehension on scene. From his encounter with police, § 87(2)(b) sustained bruises on his entire right arm beginning at the palm, light bruising on his left arm, a swollen lump at the base of his skull, scraped knees, back pain, handcuff marks on his wrists, and swelling in his face. § 87(2)(b) bled from a spot about two inches below his left eye where the officer stomped on his face. § 87(2)(b) did not seek medical treatment for these injuries.

§ 87(2)(g), § 87(4-b)

This complaint resulted from the 2020 police brutality protests.

The investigation obtained thirteen body-worn camera (BWC) videos recorded by Lt. Johnson near the time and place of the incident, but none of these videos captured any interaction with § 87(2)(b). As the officers involved were not identified, the reason for the lack of BWC footage remains unclear.

## Findings and Recommendations

**Allegation (A) Force: An officer struck § 87(2)(b) with a baton.**

**Allegation (B) Force: Officers used physical force against § 87(2)(b)**

**Allegation (C) Force: Officers used physical force against § 87(2)(b)**

**Allegation (D) Discourtesy: Officers spoke discourteously to § 87(2)(b)**

**Allegation (E) Force: An officer used physical force against § 87(2)(b)**

**Allegation (F) Force: An officer restricted § 87(2)(b) breathing**

## Known facts and general descriptions

§ 87(2)(b) was interviewed over the phone on June 25, 2020 (Board Review 01). § 87(2)(b) identified one civilian witness, “§ 87(2)(b)” but did not know her legal name or have any contact information for her. The investigation was unable to identify or obtain statements from § 87(2)(b) or any

other civilians.

It is undisputed that on the evening of June 2, 2020, there was an 8:00 p.m. curfew in place. Shortly after the curfew started, a large group of protesters gathered on 3<sup>rd</sup> Avenue between 149<sup>th</sup> and 156<sup>th</sup> Streets in the Bronx. The NYPD had anticipated this gathering and prepared by stationing a large number of officers from various commands—including 40 PCT, PSA7, Strategic Response Group, Narcotics, and Mobile Field Units from various precincts—on scene. The officers told the protestors to disperse, and eventually took more than 50 people into custody. Officers transported these prisoners to the 40 PCT stationhouse. At the 40 PCT stationhouse, officers, including PO Iodice, not involved in the apprehension of these prisoners issued them summonses for violating the curfew. It remains unknown which officers were at the protest and arrested the protestors.

§ 87(2)(b) stated that on June 2, 2020 he was riding his bicycle across 3<sup>rd</sup> Avenue, where there was a large group of people protesting. § 87(2)(b) stopped to speak with his friend, § 87(2)(b) who was filming the events when officers approached him. The first officer § 87(2)(b) encountered was a white male with a blonde beard wearing a helmet. As § 87(2)(b) backed away from that officer, another officer behind § 87(2)(b) pushed him forward with his baton. § 87(2)(b) was unable to provide a description of the second officer because he was behind him. § 87(2)(b) ran into the street away from the two officers.

In the street, approximately eight male officers grabbed § 87(2)(b) lifted him off the ground, and slammed him to the ground so his neck hit the ground first. § 87(2)(b) was not able to get a good look at any of these officers. While § 87(2)(b) lay on the ground on his side, one or more officers punched § 87(2)(b) on the back of his skull below the crown and his neck. § 87(2)(b) did not know which officers punched him because he was hit in the back of the head and there were many officers involved.

As he lay on the ground, various officers gave him commands including “shut the fuck up,” “put your hands behind your fucking back, and “stop fucking resisting.” § 87(2)(b) did not know who specifically said these things. As officers tried to turn § 87(2)(b) onto his stomach to handcuff him, § 87(2)(b) looked up at them. When he looked up, an officer stomped on the left side of § 87(2)(b) face with the bottom of his boot. This officer had light brown skin, slick hair, a beard, and wore a helmet and a facemask. § 87(2)(b) who is Dominican, believed the officer appeared to be Dominican.

While officers handcuffed § 87(2)(b) an officer put pressure on § 87(2)(b) back by placing their knee on his lower back behind the rib cage while other officers held his arms and legs. § 87(2)(b) did not know which officer did this or what they looked like because he was face down on the pavement.

Unidentified officers transported § 87(2)(b) to the 40 PCT stationhouse. At the stationhouse, PO Iodice wrote § 87(2)(b) a summons for disobeying the mayoral order. PO Iodice was not one of the officers he had interacted with at the protest. § 87(2)(b) interacted with eight or more officers on scene. He was only able to provide specific details about two of them. § 87(2)(b) stated that § 87(2)(b) recorded the incident and broadcasted it to Facebook Live. He also stated he made a video recording after he was released from custody documenting his injuries. Over five months, the investigation made three emails and nine phone calls to § 87(2)(b) using confirmed contact information to request this footage. Still, § 87(2)(b) did not provide either of these videos to the investigation.

### **BWC**

On June 26, 2020, BWC footage was requested and queried based on the incident date, time, precinct, and location. Because PO Iodice was the only officer § 87(2)(b) identified, the request was also queried based on his tax ID number. On July 17, 2020, the Legal Bureau responded to the request for BWC indicating no BWC footage was found (Board Review 02). On October 13, 2020, BWC footage was requested and queried a second time because PO Morales testified in his CCRB interview that he made multiple BWC recordings near the incident time and location. PO Gidarisingh and PO Pruner were also identified from police documents as making arrests near the incident location and time. The query was run based on incident date, time, precinct, location, and PO Morales', PO Gidarisingh's, and PO Pruner's tax ID numbers. On October 23, 2020 the Legal Bureau again responded that no BWC footage was found (Board Review 03). On November 18, 2020, body worn camera footage was requested a third time based on Lt. Johnson's testimony in his CCRB interview that he made multiple BWC recordings on the evening of June 2, 2020 related to the protests. On December 18, 2020 the investigation received 13 BWC recordings made by Lt. Johnson, however the recordings did not capture any interaction with § 87(2)(b) (Board Review 16).

### **NYPD Documents Reviewed**

Summons § 87(2)(b) states that at 8:30 p.m. at the intersection of 149<sup>th</sup> Street and 3<sup>rd</sup> Avenue in the Bronx, § 87(2)(b) violated the emergency mayoral order. It lists PO Iodice as the reporting officer, entering officer, and supervisor, although he was not on scene and did not observe the violation or take § 87(2)(b) into custody. It states the violation was "observed by a NYC police officer" without including this officer's identity. (Board Review 04).

Multiple 40<sup>th</sup> PCT command log entries from the evening of June 2, 2020 are incomplete (Board Review 08). The command log records that between 9:00 p.m. and 10:00 p.m. on June 2, 2020, 11 prisoners arrived at and were lodged at the stationhouse. Sergeant Velez worked as the desk officer at the time. The command log lists PO Iodice as the arresting officer for four prisoners, PO Haque for two, PO Diodonet for one, two entries exist without an officer name, and one lists only tax ID 943346. 943346 is close to PO Haque's tax ID 943349, but is also the tax ID of PO Danielle Hankerson of the 28 PCT. The investigation did not find any other documentation suggesting that there were officers from the 28 PCT at the protest beyond testimony that officers from numerous unidentified commands responded. § 87(2)(b) was recorded in the command log at 9:30 p.m. The command log listed PO Pichardo, PO Diodonet, and PO Iodice in entries from that time. Because PO Iodice was listed as the arresting officer for multiple arrests he did not participate in, it is unclear if the other officers listed in the command log were actually at the protest at any point. The command log entries do not make any note of which officers transported prisoners to the front desk.

Given the nature of the alleged injuries, documents such as a Threat, Resistance and Injury Report should have been generated. However, no TRI Reports were found for this incident (Board Review 17).

Patrol Borough Bronx did not find any detail memoranda and rosters prepared for this incident (Board Review 10). Therefore, there was no documentation of any detailed assignments at or near the event location.

Review of the 40 PCT Resource Recap Log and Events Summary revealed 20060224424 and 20060223588 and 20060221711 and 20060226456 as related events near the incident location and time (Board Review 05, 06). Details for Events 20060224424 and 20060226456 were received, while 20060223588 and 20060221711 produced no results (Board Review 07). The event summaries describe multiple groups of adults and teenagers doing various activities including

walking orderly in specific directions, carrying sticks and bats, screaming, and looting. None of the information is specific enough to either correspond or be incompatible with § 87(2)(b) description of the scene at the time of his arrest. The events details reveal that at least 25 different units from multiple commands responded to these protest events. This evidence of a large, diverse response did not allow the investigation to narrow its focus to any specific unit or officer.

A BADS search revealed PO Pruner and PO Gidarisingh making protest-related arrests near the time and location of the incident (Board Review 11). Their memo books described an arrest of a separate individual under circumstances that did not match those described by § 87(2)(b) (Board Review 08, 09).

### **Concurrent Investigations**

There are no concurrent investigations regarding this complaint.

### **Ranking Officers**

Lt. Johnson was the highest-ranking official identified as being on scene at the protest. Lt. Johnson testified that Deputy Inspector Robert Gallitelli gave the 40 PCT a briefing on the expected event, but he could not recall if DI Gallitelli or any other ranking official was on scene at 3<sup>rd</sup> Avenue and 149<sup>th</sup> Street. In his CCRB statement, Lt. Johnson testified that he was at the protest but did not instruct any officer to make arrests or issue summonses. PO Iodice testified that Lt. Johnson gave him instructions on the night in question. Neither Lt. Johnson, PO Iodice, or any other officers interviewed identified any higher-ranking officers that were on scene near the corner of 3<sup>rd</sup> Avenue and 149<sup>th</sup> Street. The investigation did not receive any documents identifying any higher-ranking officers on scene.

### **Officers Interviewed**

PO Iodice, shield 17511 of the 40 PCT, was interviewed on September 8, 2020. PO Iodice testified that at the incident time he was working an administrative assignment at the 40 PCT stationhouse; Lt. Johnson instructed him to write summonses for the people brought in from the event on 3<sup>rd</sup> Avenue and 149<sup>th</sup> Street. PO Iodice wrote about 50 such summonses. He did not participate in bringing any of the prisoners who received summonses into custody. Command log entries and § 87(2)(b) testimony corroborate PO Iodice's account. PO Iodice did not independently recall § 87(2)(b) did not recall him when presented with a description or the summons he wrote him, and did not recall any injured prisoner.

PO Morales, shield 26763 of the 40 PCT, was interviewed on October 13, 2020. PO Morales testified that he drove past the corner of 3<sup>rd</sup> Avenue and 149<sup>th</sup> Street but did not himself get out. He responded to a call several blocks from the incident location that did not match the circumstances of § 87(2)(b) case. He then switched to an administrative assignment at the stationhouse. PO Morales did not recall interacting with anyone matching § 87(2)(b) description. No evidence or testimony contradicted PO Morales' account or suggested he was ever present on scene at 3<sup>rd</sup> Avenue and 149<sup>th</sup> Street.

Lt. Johnson of the 40 PCT was interviewed on November 17, 2020. Lt. Johnson testified that he

was on scene at 3<sup>rd</sup> Avenue and 149<sup>th</sup> Street near the incident time. He denied participating in or directing any arrests and summonses on scene. Lt. Johnson did not independently recall § 87(2)(b) did not recall anyone matching his description, and did not recall any injured prisoners. No evidence the investigation found suggested Lt. Johnson directly participated in bringing § 87(2)(b) into custody. Lt. Johnson, a clean-shaven white male, does not match either of the two specific descriptions provided by § 87(2)(b) (Board Review 12).

Sgt. Velez, shield 00186 of the 40 PCT, was interviewed on December 4, 2020. Sgt. Velez was the desk sergeant at the time of the incident. That night, officers brought approximately 50-150 prisoners to be arrested or summonsed to the front desk. Sgt. Velez checked in every prisoner who came in. Some of the officers transporting prisoners were from the 40 PCT, some were from PSA7, and some were officers Sgt. Velez did not recognize at all. He did not recall any specific officers who brought in prisoners. Sgt. Velez did not recall any prisoners with injuries or any prisoner going to the hospital. None of the prisoners complained to Sgt. Velez about any injury.

### **Disposition**

Both § 87(2)(b) and all members of service interviewed testified that there were officers from multiple commands present. Requests for Detail Memoranda to verify the presence and assignments of officers at the event were returned with no documentation found. Based on officer testimony, more than 100 officers were present from commands including the 40 PCT, PSA7, Strategic Response Group (SRG), Narcotics, and Mobile Field Units from an unknown number of precincts. Due to the large number of officers from multiple unknown commands, the relatively vague descriptions of the officers involved could not be meaningfully cross-referenced with MOS pedigree information. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(4-b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first complaint to which § 87(2)(b) has been a party (Board Review 13).
- Lt. Johnson has been a member of the service for seventeen years and has been a subject in four prior CCRB complaints and seven total allegations, none of which were substantiated.

§ 87(2)(g)

### Mediation, Civil and Criminal Histories

- This complaint was not eligible for mediation.
- As of December 16, 2020 the NYC Office of the Comptroller had not received any notice of claim regarding the incident (Board Review 18)

§ 87(2)(b)

Squad No.: 15

Investigator:	<u>Emma Kaisla</u>	<u>Inv. Emma Kaisla</u>	<u>1/21/21</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Simon Wang</u>	<u>IM Simon Wang</u>	<u>02/20/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date